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THE INTERNATIONAL PRIZE COURT AND CODE¹

By James L. Tryon, Secretary of the Massachusetts Peace Society.

The proposition of Secretary Knox to invest the International Prize Court with the functions of the Court of Arbitral Justice brought the former institution into prominence. The questions may be properly asked, How do we come to have such a court? What are its uses? What has it to do with the peace policies of the Hague Conferences which created it and what is its place in the world order? Similar questions may be asked in regard to the international prize code.

To understand what the court and code mean it is necessary to know something about the situation in a naval war of merchant ships and commerce, particularly of neutrals.

Neutral property at sea in time of war is treated in most respects differently from enemy property. The enemy's merchant ships and cargoes, with certain specified exceptions, are captured and confiscated or destroyed simply because they are enemy property. Neutral ships or cargoes, sometimes both, are confiscated or destroyed because they are implicated in furnishing contraband, i. e., forbidden goods to an enemy, or rendering unneutral service to him against the interest of the other belligerent. Every belligerent warship has the legal right to search a neutral merchant ship on the high seas and in case of strong presumptive evidence to arrest and seize it for carrying contraband or for intended, attempted or actual violation of a blockade of the enemy's coasts or ports or for unneutral service.

There is a necessary conflict between the rights of neutrals and the rights of belligerents in war. Neutrals want to keep on trading with both belligerents as in times of peace; indeed, in time of war the neutral traders can often get higher prices for their goods than in times of peace. They, therefore, resent interference with their business. To them interference means serious financial loss. But a belligerent government will not permit its enemy to be furnished with warlike supplies, if they can be seized on the high seas; nor let a blockade be broken by a neutral when, by keeping a port closed, it can prevent its enemy from receiving

¹ All rights reserved.

supplies, or starve him out or stop an export trade that is of vital importance in furnishing him money for war.

Injustice, due sometimes to mistake, sometimes to arbitrary rules, sometimes to the necessity of self-protection, has resulted from conflicting interests of neutrals and belligerents.

But how are the disputes arising from these opposing interests settled?

The question as to the validity of the capture of a ship or cargo taken in war is decided, as is known to students of International Law, by specially designated tribunals called "Prize Courts." A merchant vessel that is captured is called a "prize." Hitherto each belligerent nation has determined what is its prize law. And although belligerents are supposed and have claimed to administer prize law impartially, according to customs generally accepted by the nations, their courts have been subject to temptation, from patriotic motives, to favor the interests of their country by approving cases of seizure whether valid or invalid.

By 1907 the anomalies and difficulties connected with national prize courts had received considerable criticism. The conscience of the world demanded that a third party instead of an interested party, i. e., the captor nation, should try cases of prize, and under the leadership of Germany, a plan for an international prize court, to correct the deficiencies of national prize courts, was adopted by the Second Hague Conference.

THE INTERNATIONAL PRIZE COURT.²

By the general provisions of the Hague Convention relating to the International Prize Court, the court is available to belligerents as well as neutrals. The International Prize Court is a court of appeal, the national courts of the captor exercising jurisdiction

² The text of the International Prize Court may be found in Scott's *Texts*, p. 239; Scott's *Conferences*, Vol. II, 472. For commentaries and discussions see Scott's *Conferences*, Vol. I, p. 465-511.

Higgins, *The Hague Peace Conferences* (text, also) pp. 406-444. Higgins, p. 431, has several references, of which the following works in English are especially valuable to the American reader.

J. Pawley Bate, *Prize Courts and an International Prize Court of Appeal*, *International Law Association, 23rd Report* (1906), p. 151; H. B. Brown, *The Proposed International Prize Court*, *Am. Journ. Int. Law*, Vol. II, p. 476; C. N. Gregory, *The Proposed International Prize Court and Some of Its Difficulties*, *Am. Journ. of Int. Law*, Vol. II, 458.

See discussion in the *Proceedings of the American Society of International Law*, 1908. On the question of the legality of prize appeals from

in the first instance. If the legal system of a nation provides for an appeal to one of its higher tribunals, that tribunal must be resorted to before a case may be taken to the Hague; but there can be only one appeal within a nation. It has been provided in the case of governments, that, like the United States, find difficulties in their constitutions preventing an appeal to an international court, a case may be taken before the International Prize Court *de novo* as a direct claim for damages.³ But a case may also go to the International Court directly if final judgment be not given by a belligerent captor "within two years from the date of capture." (Art. 6.)

An enemy's property is usually disposed of summarily by the court of the captor; but exceptions may be considered by the International Prize Court, as when an enemy ship is captured in the territorial waters of a neutral, provided it is not already the subject of a diplomatic claim by the neutral power, which has a right to object to a violation of its jurisdiction by a belligerent warship. It has been customary in the past for neutrals to protest against seizures in their waters on the ground that such seizures

the United States Supreme Court, see Thomas Raeburn White in *Pennsylvania Arbitration and Peace Conference*, Philadelphia, 1908. The same 2 *Am. Journ. of Int. Law*, p. 490.

Hull's, *The Two Hague Conferences* contains good introductory matter. See also Hon. Joseph H. Choate's *Remarks on the International Court of Prize in American Addresses at the Second Hague Conference*, p. 69.

³ An arrangement for an appeal to the International Prize Court from the United States was made at the London Naval Conference in the following protocol:

"The delegates of the Powers represented at the Naval Conference which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court, having regard to the difficulties of a constitutional nature which, in some states, stand in the way of the ratification of that convention in its present form, agree to call the attention of their respective governments to the advantage of concluding an arrangement under which such states would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said convention either to individuals or to their governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention."

infringe upon their rights of sovereignty, and for belligerents to recognize neutral rights by freeing the prizes. But hitherto as between the belligerents themselves the capture has been valid and the decision of a national prize court affirming the validity of such capture has been final. The new rule is a step forward in international justice, as it is a more perfect recognition of the sanctity of neutral sovereignty than has prevailed.

Cases may come before the International Prize Court according to the following regulation:

Art. 3. The judgment of national prize courts may be brought before the International Prize Court:

1. When the judgment of the national prize courts affects the property of a neutral power or individual.
2. When the judgment affects enemy property and relates to:
 - (a) Cargo on board a neutral ship.
 - (b) An enemy ship captured in the territorial waters of a neutral power, when that power has not made the capture the subject of a diplomatic claim.
 - (c) A claim based upon the allegation that the seizure has been effected in violation, either of the provisions of a convention in force between the belligerent powers, or of an enactment issued by the belligerent captor.

The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

The appeal may be made by the government of the aggrieved party or the individual himself, but the individual may be forbidden the privilege of appeal by the laws of his own country. It is an interesting sign of progress made with the help of the Hague Conferences, that an individual in his own capacity may seek redress for his wrongs in an international court. This provision may be a prophecy of a time when international law on a wider scale will protect every individual whether in civilized nations or among the less developed peoples.

Rights of property acquired by one individual from another who is qualified to appeal may be the subject of litigation in the court.

If a capture proves valid, the vessel or cargo in question is disposed of according to the laws of the captor country; but, if null, the International Prize Court may fix the damages caused by delay or other injury, or, in case of destruction, may determine the amount of compensation to be paid. If, however, the national court pronounced the capture to be null, the International Prize

Court can only be asked to decide as to the damages. But these are technical matters upon which it is not necessary to enter fully. It is of more significance to note that, as in the case of the Convention for the Pacific Settlement of International Disputes and of the Geneva Convention, the governments pledge themselves to carry out the principles on which they have agreed. For example, Article 9 of the Prize Court Convention says:

The contracting powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

As to the judges and their functions, provision is made that the court shall have fifteen judges and as many more deputy judges to serve as substitutes in case of necessary absence or vacancy. Eight powers, Germany, United States of America, Austria-Hungary, France, Great Britain, Italy, Japan and Russia are entitled to have judges on the bench all the time, and their appointment is renewable; the others sit by rotation in shorter periods of years according to a table annexed to the Convention.

The duties of the judges appointed by rotation may be performed by the same person, i. e., the same judge may be appointed by several of the minor powers, as in the Permanent Court of Arbitration, which permits more than one power to choose the same judge. Nine judges constitute a quorum.

In case of war each belligerent is entitled to have a judge appointed to sit in the court, if it has not one already there, and in that case one of the judges appointed by the neutral powers must withdraw, the choice to be made by lot. Judges cannot act in the International Prize Court if they have personally been connected with the case in hand in a national court, nor can they serve as agents or counsel before the International Prize Court or in any capacity for one of the parties to a case before it. The latter restrictions correspond to the practice proposed for the Court of Arbitral Justice and should apply to the present Permanent Court of Arbitration. "Once a judge, always a judge," a favorite English maxim, has been discovered to be a good international rule.

The belligerent captor may appoint "a naval officer of high rank to sit as assessor, but with no voice in the decision." (Art. 18.) This provision, a compromise suggested by Hon. Joseph H. Choate,⁴ when (owing to differences of opinion) the scheme for

⁴ See Mr. Choate's *Remarks on the International Court of Prize* in Scott's *American Addresses at the Second Hague Peace Conference*, p. 69.

the International Prize Court was likely to fail in the Conference, was made in deference to the prejudices of Germany, for Germany preferred a court of naval officers rather than of civilians for naval cases. A neutral power that is concerned in the case has the same privilege of being represented by a judge as a belligerent, but if two or more neutrals claim it at the same time they must agree among themselves, if necessary by lot, on the officer to be appointed.

The judges elect their President and Vice-President. The judges are not put on regular salary, but, like the members of the Permanent Court of Arbitration, are paid while they are in service. Their fee is about \$40 a day and traveling expenses. They are not allowed to receive pay from their own country or any other power as members of the court, their salaries coming from a common international fund.

As with the Permanent Court of Arbitration, the seat of the International Prize Court is at The Hague and it cannot, except by reason of superior force, be changed without the consent of the belligerents. The Administrative Council and the International Bureau are at the service of the court as in the case of the Permanent Court of Arbitration. The court regulates the language to be used by it; the powers are allowed to be represented before it by agents and counsel. An attorney in order to appear before it must be qualified to practice in a high court of his own country or be a professor of law in one of the higher teaching centers of one of the contracting states. The court has power to serve notices on the parties, witnesses and experts; and the government with which they are connected must assist it in giving notification, as in collecting evidence, unless the sovereignty or the safety of the government called upon is in danger of being impaired by lending assistance. The Court may also act through the power on whose territory it sits.

A system of procedure is devised with regard to the technical steps necessary to be taken in appeals. These must be entered within 120 days from the date of decision made by a national court, or within 30 days after the expiration of the two years in which a captor is allowed to keep a case in its own hands.

The formalities must be put into writing, but the telegraph may be used in communicating to the International Bureau the intention to appeal. Leave to make appeal later is to be granted in cases where superior force prevents an appeal from being made on time. Pleadings before the court are in writing, but the discus-

sions are oral. The latter are conducted in public unless there is objection by one of the governments concerned. Decisions are based on "all the facts, evidence, and oral statements" (Art. 4); they are reached in private deliberations by a majority vote of the judges present. The reasons on which a decision is based must be stated and the names of the participating judges and assessors given. It must be signed by the President and the Registrar. Compare similar requirements in the proposed Court of Arbitral Justice and the present Permanent Court of Arbitration.⁵

"Each party pays its own costs" (Art. 46), but the general expenses of the court are charged to the contracting powers, according to their share, as indicated by the rota table annexed to the Convention. No contribution is required for the privilege of appointing deputies. Individuals who appeal to the court have to furnish security.

The court may in other respects draw up its own procedure and may propose changes relating to the procedure laid down in the conventions; but its proposals must be communicated to the powers through the Netherlands government.

The Convention is not enforced in case of war between one of the contracting powers and a belligerent that does not sign it; but as between the contracting powers that do sign it, it remains in force for twelve years, after which it is renewable in periods of six years, unless denounced. But it is provided that there must be such representation of powers as to make up a board of nine judges and nine deputy judges. If the total number of judges falls below eleven, seven shall be a quorum. Provision is made for a revision of the rota table in case of future changes in the relative interests and importance of the contracting powers.

Such, then, is the plan of the International Prize Court. It has been subjected to criticism, both as a document and as a peace measure. Its critics point out that the usefulness of the Court is entirely dependent on the actual occurrence of naval war, that it has no function in time of peace, except to be organized for an emergency. It is, however, conceivable that the court may have occasion to sit on some of its unfinished cases in times of peace. But, in a special sense, it is a court of peace. Its great object must not be forgotten. It is to ensure justice pri-

⁵ For a comparison of the Court of Arbitral Justice and the Permanent Court of Arbitration, see the writer's article in XIX YALE LAW JOURNAL, 145. In this article will be found various references to these courts.

marily between belligerents and neutrals by acting as a disinterested third party in judging their disputes. Justice tends to peace; injustice to war, i. e., in this case to the extension of the area of war from the two original enemies to others, who, because of financial loss from unlawful interference with their trade or because of reckless belligerent acts detrimental to their sovereignty, may be drawn into a contest. One can therefore see that the International Prize Court, though it comes into operation because of war, is also a peace measure for which the friends of peace should be thankful.

Opinions differ as to what constitutes the most noteworthy achievement of the Second Hague Conference. But Sir Edward Fry, the chairman of the delegation of Great Britain, considered the International Prize Court the most remarkable work of that body; "because," to use his own language, "it is the first time in the history of the world that there has been organized a court truly international."⁶ Sir Edward hoped to see a real system of International Law formed around the Prize Court to take the place of the present uncertainties, and this thought leads to the question of an international prize code to be administered by the court. The defects in the instrument that created the court were in part the occasion for making a code.

THE INTERNATIONAL PRIZE CODE⁷—THE DECLARATION OF LONDON.

When the Second Hague Conference adjourned it was supposed by the outside world that the International Prize Court

⁶ Quoted by Admiral Stockton.

⁷ For the text of the international prize code, officially known as the Declaration of London, and for an explanatory report accompanying it, see Higgins, pp. 538-567. *International Law Topics*, Naval War College, 1909, the whole volume. For text of the Declaration see 3 *Am. Journ. of Int. Law, Supplement*, pp. 179-220. For a clear exposition, Rear Admiral C. H. Stockton's article, 3 *Am. Journ. of Int. Law*, pp. 596-618, and the *Mohonk Arbitration Report* for 1909.

The best reference is to *British Parliamentary Papers, Miscellaneous* Nos. 4 (Ed. 4554) and 5 (1909) (Ed. 4555). Published by P. S. King & Son, Parliamentary Booksellers, Westminster. See also *Miscellaneous No. 4* (1910), Correspondence Respecting the Declaration of London, with Chambers of Commerce (Ed. 4518). *International Naval Conference* and *Ibid No. 4* (1910) Declaration of London.

Valuable suggestions for the work of the London Naval Conference may be found in Thomas J. Lawrence, *International Problems and Hague Conferences*, London, 1908.

would be acceptable. But ratifications were withheld because of the vagueness of one of its most important articles.

Part of Article 7 reads as follows:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.

As to this particular section of the article, there was no question. If there is a treaty between two nations stipulating what shall be their practice in regard to prizes taken in a war with each other, there is no reason why it should not be enforced between them like any contract between individuals.

But the following paragraph caused uneasiness:

In the absence of such provision, the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

It will be observed that wide discretion is left to the judges. They are, in fact, in a position to make law by giving their own interpretations and opinions in a case of doubt. Now, what are the rules of International Law referred to? What are the general principles of justice and equity which may be applied where no generally recognized rule of law exists? These are apparently simple questions, but underlying them are historic conceptions and definitions of a diverse character, the application of some of which might infringe seriously upon a nation's sovereignty or cause its citizens to lose millions of dollars worth of property. Belligerent have always had the right to make their own rules as to the definition of contraband and the regulation of blockade which, though agreeing in some points, have differed radically in others, until there have developed two distinct systems, the continental or European, and the Anglo-American, which includes the Japanese. The judges of the Prize Court might follow the spirit of either

Consult also Wilson's *Handbook of International Law* in the *Hornbook Series*. Among recent press articles and reports on the British opposition to the Prize Code, see Denys P. Myers' article, *Boston Transcript*, March 11, 1911, and the *London Times*, March 9, 1911. The article in the *Times* contains an important reply by the Earl of Desart.

For official reports of discussions at the Hague Conference, relating to the International Prize Court and of subjects that were later taken up in the International Prize Code, see *Deuxieme Conference Internationale De La Paix*, La Haye, 1907. The three volumes of this work are the best source of information relating to the matters pertaining to the Second Hague Conference.

of these diverse systems; but being chiefly Europeans would be likely to adopt continental ideas.

Great Britain viewed the situation with alarm. Great Britain would be the principal neutral victim in a naval war between two other nations because it has the largest merchant marine sailing on all the waters of the world, which is liable to vexatious search and unjust seizure. Great Britain also has the largest navy and, consequently the most important interests as a belligerent. It was feared by her statesmen that her position both as a commercial and a naval power would be imperilled by the establishment of the court.

Great Britain, therefore, as the nation most interested in the decisions of the International Prize Court, initiated a maritime conference in 1908 to make an International Prize Code. The ten powers most likely to be affected by a naval war were invited to participate. These were: Austria-Hungary, France, Germany, Great Britain, Holland, Italy, Japan, Russia, Spain and the United States of America.

The International Naval Conference met at London, Dec. 4, 1908, and continued in session until Feb. 26, 1909, when it made "a Declaration Concerning the Laws of Naval War," quoted as the Declaration of London."

The conference was characterized by a general spirit of compromise. Its Declaration consists of seventy-one articles. To explain them all would lead to technicalities that belong rather to the domain of the naval expert than the student of International Law or of the world peace movement. Clear explanations of them have been written by Admiral Stockton⁸ of the American delegation and others, which may be consulted by students who care to follow the subject into its details.

The Declaration is intended to be adopted as a whole and is to be the International Code of Prize Law, but though intended to be used by the International Prize Court, is not dependent upon the adoption of that court by the signatory powers. It is complete and effective in itself, after ratification, in case of naval war. It reconciles previously existing views as to the nature of blockade, continuous voyage, contraband, the destruction of neutral prizes and other matters upon which international agreement has been so long desired. It is important to note the preliminary provision which says:

⁸ Admiral Stockton, *The International Naval Conference of London*, 3 *Am. Journ. of Int. Law*, pp. 596-618.

The Signatory Powers are agreed in declaring that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

As to blockade, the Declaration requires that a neutral war vessel shall get permission to pass it, and makes the liability of a neutral merchant ship to capture contingent, not upon notification of the blockade on the spot as has been the French contention, but upon knowledge that a blockade exists. By the Declaration, the question of the effectiveness of a blockade is one of fact. Though the zone of operations to which liability to capture is confined varies with circumstances, i. e., according as the blockade affects a whole coast line or the mouth of a river, etc., the rules restrict the area of possible capture to the zone of blockading operations; it is no longer the whole ocean, as has formerly been held by the United States and England. These nations have considered it permissible to seize blockade runners from the moment of their leaving port, perhaps thousands of miles from the blockaded district to which they were destined, and under circumstances making it difficult to prove a case, or involving great inconvenience and delay to owners in event of mistake. Pursuit of a blockade runner need not be continuous by the same cruiser, but may be followed up successively by other cruisers stationed at wide intervals apart.

In taking up the question of "continuous voyage" it was decided that a vessel bound for an unblockaded port is exempt from capture, although it may be intended that its cargo be reshipped from an unblockaded port or a neutral port on another and smaller vessel to the port of an enemy that is blockaded. This kind of evasion frequently occurred in the American Civil War and caused the United States government to extend the doctrine of "continuous voyage" to blockade as well as to contraband. This measure protected the United States from fraud, but proved too radical for adoption by the world at large.

The chapter on contraband is said by Admiral Stockton to be the greatest success of the naval conference. It divides contraband into the three classes that have been recognized since the days of Grotius; but removes controversial questions by carefully defining the articles coming under each classification. The classifications are: absolute, conditional contraband and non-contraband.

The list of absolute contraband, i. e., distinctly military supplies, is the same as that which was agreed upon informally at

the Second Hague Conference, where a complete settlement of the subject proved impossible. Besides including strictly military articles, absolute contraband now will include horses and mules adapted to warlike uses. The United States would have put these on the conditional contraband list, but, as in some countries when war breaks out all horses and beasts of burden are subject to requisition, if the state so wills, it was decided to include them.

Absolute contraband is defined as follows:

Art. 22. The following articles and materials are, without notice, regarded as contraband, under the name of absolute contraband:

1. Arms of all kinds, including arms for sporting purposes, and their unassembled distinctive parts.
2. Projectiles, charges, and cartridges of all kinds, and their unassembled distinctive parts.
3. Powder and explosives specially adapted for use in war.
4. Gun-carriages, caissons, limbers, military wagons, field forges, and their unassembled distinctive parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught, and pack animals suitable for use in war.
8. Articles of camp equipment, and their unassembled distinctive parts.
9. Armor plates.
10. Warships and boats and their unassembled parts specially distinctive as suitable for use only in a vessel of war.
11. Implements and apparatus made exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or of military material for use on land or sea.

Conditional contraband is defined as follows:

Art. 24. The following articles and materials susceptible of use in war as well as for purposes of peace, are without notice, regarded as contraband of war, under the name of conditional contraband:

1. Food.
2. Forage and grain suitable for feeding animals.
3. Clothing and fabrics for clothing, boots and shoes, suitable for military use.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds available for use in war, and their unassembled parts.
6. Vessels, craft, and boats of all kinds, floating docks, parts of docks, as also their unassembled parts.
7. Fixed railway material and rolling-stock, and material for telegraphs, radio telegraphs, and telephones.
8. Balloons and flying machines and their unassembled distinctive parts as also their accessories, articles and materials distinc-

tive as intended for use in connection with balloons or flying machines.

9. Fuel; lubricants.

10. Powder and explosives which are not specially adapted for use in war.

11. Barbed wire as also the implements for placing and cutting the same.

12. Horseshoes and horseshoeing materials.

13. Harness and saddlery material.

14. Binocular glasses, telescopes, chronometers, and all kinds of nautical instruments.

Recent criticism of the Declaration in Great Britain has been due to a fear that the food supply for the use of the general population of England would be jeopardized by the measures; but this point seems not to be well taken, as only such food supplies as are destined to military forces, can be captured.

By the code non-contraband is defined:

Art. 28. The following articles are not to be declared contraband of war:

1. Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and also yarns of the same.

2. Nuts and oil seeds; copra.

3. Rubber, resins, gums, and lacs; hops.

4. Raw hides, horns, bones, and ivory.

5. Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

6. Metallic ores.

7. Earths, clays, lime, chalk, stone, including marble, bricks, slates and tiles.

8. Chinaware and glass.

9. Paper and materials prepared for its manufacture.

10. Soap, paint and colours, including articles exclusively used in their manufacture, and varnishes.

11. Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

12. Agricultural, mining, textile, and printing machinery.

13. Precious stones, semi-precious stones, pearls, mother-of-pearl, and coral.

14. Clocks, and watches, other than chronometers.

15. Fashion, and fancy goods.

16. Feathers of all kinds, hairs, and bristles.

17. Articles of household furniture and decoration; office furniture and accessories.

"Articles and material serving exclusively for the care of the sick and wounded" (Art. 29) are non-contraband also, but, when destined for enemy territory or forces, may in case of urgent military necessity be requisitioned from a neutral vessel in which

they are found. If requisitioned they must be paid for. "Articles and materials intended for the use of a vessel in which they are found, as well as those for the use of her crew and passengers during the voyage," are non-contraband.

But suppose a neutral vessel is found at sea with a cargo partly contraband and partly innocent? This in the past has been a difficult question as the proportion of contraband necessary to constitute a case of guilt has been variously determined. What will happen in the future? If more than one-half of the cargo is contraband, reckoned by value, weight, volume or freight, not only it but the ship itself is confiscable. If the ship carries less than one-half contraband, and the master is willing to hand it over to the belligerent, the contraband may be taken and destroyed without further penalty being laid on the ship, which may then go on its way.

The doctrine of "continuous voyage" was applied to absolute contraband only.

As to the destruction of neutral ships, there was much discussion and bad feeling during the Russo-Japanese War. In that conflict, the British steamer, *Knight Commander*, carrying principally a cargo of railway material, specified as contraband by the reactionary Russian prize code, was sunk on short notice by a Russian warship on the justification of "necessity," that the ship was out of coal and could not be taken to a Russian port for trial, in conformity with International Law. Great Britain protested and put in a claim for reimbursement in vain. The law as to the destruction of neutral prizes, and especially the definition of "necessity" was at that time in a state of confusion and doubt. Now, however, by the Declaration of London, it is recognized that neutral prizes may be destroyed in cases of necessity, when, for example, their removal to the belligerent's port for adjudication "would involve danger to the ship of war or to the success of the operations in which she is at the time engaged." (Art. 49). But the excuse of necessity must be established, and, if it cannot be, the neutral shall be compensated for his loss whether the capture in other respects would have proved valid or not.

Before destruction, precaution must be taken to secure the safety of a neutral ship's crew and papers, as was done, however, before the sinking of the *Knight Commander*.

In the Civil War, Great Britain objected to the removal by a United States naval vessel of two Confederate civil emissaries, Messrs. Mason and Slidell, from the British steamer *Trent*, an

innocent neutral on the high seas. The United States proved to be in the wrong, but, by an explanation and a surrender of the captives set itself right with Great Britain and, it is believed, thereby averted war. But hereafter according to Art. 47:

Any individual embodied in the *armed* force of the enemy, and who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

This provision will be a distinct help to neutrals. It will make for the convenience of ocean travelers who might otherwise be subjected to delays attending the detention of a ship or be put to extra expense by being landed at a port remote from the line of travel. The clearness of the law will also tend to prevent a mistake like that made in the "*Trent Affair*."⁹

The Declaration of London was not intended to be a complete war code of the sea, but on those points upon which it touches it is final. The Declaration solved some questions relating to prizes, but it did not settle the question of the transformation of merchant ships into warships on the high seas or elsewhere in time of war; for which reason it has been criticized unfavorably in England. It did not decide whether domicile or nationality should determine the character of a cargo; agreement on this question was impossible. But it did decide that the flag determines the character, whether neutral or enemy, of a merchant ship. It also defined the power of an enemy owner to transfer one of his merchant ships to a neutral owner in order to prevent its capture.

The Declaration is to last twelve years, but is afterwards renewable in six-year periods. It may be denounced a year before the end of either of these periods, its denunciation to be notified to the other powers. It may be amended in respect to adding new articles to contraband by any of the nations that are parties to it. The amendments must also be notified to the whole body of contracting powers.

It is significant that "for the first time in history" as Adimral Stockton well says, "the great sea powers and consequently the great powers of the world, have agreed upon a code formulated with a very considerable detail and precision which settles many disputed questions of maritime warfare."¹⁰ The adjustment is so

⁹ See Thomas L. Harris, *The Trent Affair*. Indianapolis, 1896; Moore, *International Law Digest*, VII, Sec. 1265.

¹⁰ Admiral Stockton, *The International Naval Conference of London*, 3 *Am. Journ. of Int. Law*, pp. 596-618.

made that historic "war rights," which Great Britain was jealous to preserve and the rights of neutrals, which she was equally desirous to protect, are both safeguarded. England, as the initiator of the conference, is made the intermediary of the powers that were concerned in drawing up the Declaration and is authorized to receive adhesions from other powers that desire to adopt it, but provision is made that England must notify the original signatories of all acceptances.

What now does all this legislation mean? It means that when the International Prize Court and Code come into use there will be a single system of law among the signatory nations with respect to prizes. Each signatory nation will no longer have the exclusive right to be its own judge of correct principles in a historic and important department of International Law, but will be subject to a higher sovereignty, the self-imposed order of a quasi-international union, of the gradual growth of which the court and code are both expressions. It is another step forward in the limitation of war by the development of international justice. It is therefore a notable advance in the evolution of the peace movement.

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